



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
P.O. Box 190
Weare, NH 03281
Phone: (603) 529-2250
Fax: (603) 529-4554

Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**PLANNING BOARD
MINUTES
SEPTEMBER 30, 2009
(Approved as amended 12/17/09)**

PRESENT: Chairman Craig Francisco; George Malette, Secretary; Tom Clow, Exofficio; Neal Kurk; Dani-Jean Stuart, Alternate; Naomi Bolton, Land Use Coordinator

GUESTS: Todd Moore, NHDES; Dick Fraser, One Source Properties; Mike Dahlberg, LLS; Chris Bolton; Bruce Fillmore; Nancy Fillmore; Jed Callen, Esquire; Eric Rinehimer; Kristen Cole; Joe Czarnecki; Douglas Ewing; James Fleming; Diane Fleming; Samantha Lion; Deborah Lion; Thelma Tracy; Keith L. Lion; Robert Kordas; Raymond Harrison; Joanne Harrison; Cindy Allen (McAninch); Michael Cook; Floyd Colburn; Amy Osborne; Robin Norris; Peter Norris; Louis N. Page; Thomas A. Page; Sharon Rizzitano; Armand Turcotte; David Bedard; Russell LeBrecht; Forrest Esenwine; Ginger Esenwine; Patricia Ober; Russell T. Ober; Michael Zankowski; Sandra Zankowski; Charlotte Poisson; Allexis Kollias; Ron Scott, III; Christine Nase; Dennis R. Antle, Sr.; Elaine T. Antle; June Antle; Conray Antle; Stephen Pope; Denise Methot; Nathaniel H. Shaw; Frank Campana; Bill Ranahan; Lynda Ranahan; Mike Duhaime; Anne Harris; Carol Whitmore; Bruce Gilman; Jean Mackin, WMUR TV9; April Dugay; John C. Lange; Dawn Drew; Ariel Freedman; Peter Freedman; Roland Beauregard; Christine Hague; David McDonald; Roger LeBlanc; Jean M. LeBlanc; Emilee Lupi; Oliver McLaughlin; Matthew & Jennifer Korkin; Rod Babka; Susan Babka; Georgia Paris; Jerry Paris; Stephen Fifield; Gregory Stone; Diane Lupi; Edward R. Lyons, Jr.; Emerito Rolon; Keith Demers; Danielle Younie; Paul Demers; Debbie Demers; Lisa Bowker; Theresa Bowker; David Nelson; Jessica Gorman; John Nelson; Tammie Nelson; David Dumas; Marjorie Dumas; Ronald Lemay; Amy Augustine; George Turcotte; Elmer Florentino; Kim Florentino; Sabrina Antle; Adam Anderson; Miranda Anderson; Hal Maloof; Paul Hague; Stephen Flanders; Donna Osborne.

I. CALL TO ORDER:

Chairman Craig Francisco called the meeting to order at 7:00 PM at the Weare Middle School Cafetorium, 16 East Road. Chairman Francisco appointed Dani-Jean Stuart as a voting member in the absence of Frank Bolton.

II. PUBLIC HEARING:

MT. WILLIAM, INC. – SITE PLAN REVIEW (CONTINUED HEARING), RIVER ROAD, TAX MAP 409-004: Chairman Francisco opened this hearing at 7:00 PM. Chairman Francisco stated that the first order of business is to check for the completeness of the application. There are 21 items on the checklist and 19 of them are checked off and 2 are not applicable. Neal Kurk moved to accept the application as complete; Tom Clow seconded the motion, all in favor. Chairman Francisco explained that he received a call from the Dunbarton Town Administrator to inquire if this is a regional impact. There are 6 factors listed in the RSA to determine if this proposal would be considered a regional impact. Chairman Francisco stated that he felt in his opinion that it is not. Mr. Kurk stated that he agreed. In his view and during the course of the public hearing some things that come up could be looked into and the board could reconsider the vote at the conclusion of this public hearing. Tom Cow moved that at this time there is no regional impact for this proposed project; Neal Kurk seconded the motion, all in favor.

Chairman Francisco then addressed Chris Bolton to speak to his application. Mr. Bolton stated that he is proposing an asphalt batch plant in Town at his current business on 1225 River Road. There has been a lot of discussion about a lot of things. He would like to clear up one issue and that is that he is not making liquid asphalt. He is proposing to take rock and sand, add liquid asphalt and mix it together and empty it into the trucks as it is needed. The total footprint of the proposed batch plant is about half the size of his current garage. It is not quite a quarter of the size of this school. He stated that he feels he has been a good neighbor and if he thought any his neighbors were going to smell it or hear it he wouldn't have proposed it. Mr. Bolton then talked about truck traffic. This proposal would actually decrease his truck traffic because all the trucks will not be trucking the materials off to other asphalt plants around the state, he would keep it for his own materials. Mr. Bolton then turned the floor over to Mike Dahlberg, to explain the plans. Mr. Dahlberg went through the distances to the closest neighbors. He showed the aquifer map. He then explained how the asphalt plant works. They meet all the requirements of setback. They have tucked it behind the existing operation. If there was a spill once it hits the environment it solidifies. He believes that truck traffic will be less, a lot of the aggregates go to other batch plants, and he anticipates an additional 14 trucks at its peak. They would not be 18 wheelers; most of them are 12 wheelers with a third set of axles that enables them to carry heavy loads.

Chairman Francisco introduced Todd Moore from NHDES - Air Resources Division on behalf of the Town. Mr. Moore is here to talk about the regulations. Mr. Moore explained that any asphalt plant needs to be issued a permit before any plant is purchased. The reason the plants need a permit is because there is a good sized burner to fire it, which needs a permit because of its size. The other reason, they are subject to federal regulations but the State implements it and enforces it. The permit process starts with a submittal. The applicant submits the potential

pollutants and they have their professionals review the information. NHDES regulates the fumes that emitted. They do not regulate noise and odor. Once the submittal is considered complete then NHDES holds a hearing before a permit is issued. Mr. Moore stated that the last issue that NHDES had was in 2002 for the Pike Industries plant in Henniker. The issues were taken care and he has not heard anything more about this plant.

Dave Bedard, Roosevelt Road asked if the permit is a permit and is it renewable. Mr. Moore responded that the first permit is considered a temporary permit for 18 months. It is a renewable permit. If they pass all the tests before the 18 months the operation can then obtain an operating permit. Those are issued in 5 year blocks.

Jed Callen, Attorney from Baldwin and Callen in Concord stated that he is here tonight representing 39 residents at this point. He had a presentation all ready to go by but with the information given by Mr. Moore of NHDES his information is out of date. Among the 39 clients he represents, two are direct abutters, Tammie and John Nelson; two are very close on River Road and the others are on Roosevelt Drive. He felt that those residents on Roosevelt Drive are really close enough and he feels for that reason and in his opinion they earn standing as abutters. They are happy to see that Vice Chairman Bolton is not seated and has disqualified himself from this. Attorney Callen also wanted to comment about just getting copies of the maps about 20 minutes ago. He stated that he was told from a couple of his clients that they were not able to get copies of the file. They got copies of the one page application page; four sheets of the checklist and a couple of 11 x 17 sheets of the plans. He feels that is not proper for an application of this magnitude. He needs to get right to the issue. He feels it was inappropriate for the board to accept the application. He feels it is illegal for the board to proceed. Attorney Callen cited Section 4 as the issue. All applications must comply with the Town's zoning regulations, before acceptance. He feels this is not in compliance. The Town's zoning regulations is the application in compliance. The reason he is not is the plant is located in the Commercial zone; some of the parcel is in the RA district. The commercial district has some permitted uses and they don't include anything that is close to the asphalt plant. He then cited article 24.3.1 any use permitted in R and RA. He feels it is not permitted absence a variance. The second reason is that he doesn't think the board should move forward because of the issue the chair brought up regarding regional impact. Under the State law if any project proposed could have the potential of a possible regional impact it should be deemed as one. He feels that there could be a reasonable doubt to regional impact. He is asking the board to suspend the hearing at some point tonight so the abutting Towns could be heard. Chairman Francisco pointed out for the record that when he spoke to the Town Administrator in Dunbarton she didn't indicate that she thought it was she only inquired as to where the Planning Board was in the process of this application. Attorney Callen also stated that he feels there are a few things missing from the checklist, which goes to the completeness of the application. He would like to

conclude that given the information tonight from NHDES, which indicates in the site plan review regulations that additional information may be required by this board. He felt that the necessary permits at NHDES should be required to be received by the Town.

John Lange, Bart Clough Road asked Mr. Bolton what size plant he is proposing. Mr. Bolton responded the he is applying for a 4-6 ton batch plant.

David Nelson, 10 River Road stated that he lives down in the village in Riverdale and he is concerned about the heavier trucking. He is also concerned about the increased traffic. Liquid tar is now being added on top of the explosives, how much more hazardous materials is the Town going to allow at one property.

Trisha Ober, 47 Pondview Road stated that she is looking more towards the health issues and according to a report from Blue Ridge Environmental the toxins released from the trucks that are picking up the material should be considered. Another concern is property values, how is this plant going to affect those values here in Weare. She feels that long term health impacts and property values should be looked into.

Tom Page, 187 Bart Clough Road stated that he has a problem with this batch plant. First he would hope that there are no relations sitting on the board to vote on this proposal. Chairman Francisco responded that there are none. Mr. Page continued by stating that there are three aquifers around it and he is concerned about any spills. He feels there is a regional impact because of the proximity with the Piscataquoq River, which spans from New Boston to Goffstown to Dunbarton.

Tony Rolon, Roosevelt Drive stated that he just put his house up for sale and they would like to downsize. When he first signed the disclosure statement he didn't mention this proposal because he didn't know about it. Now he has to go back and let his real estate agent know of it. He stated that he pays for a view tax to look at the pit. He thinks that the proposed plant would cause a major reduction in the sale price of his house. He has had someone look at it and when they looked at the view into the existing operation they were no longer interested. He feels now that he will never be able to sell his house and that if this new proposal would be added would make it even worse.

Eric Rinehimer, 86 Roosevelt Drive stated that he went through the zoning issues. The board has the right to protect property values. There is no pollution control in that bag house that would filter out things that come out of the asphalt plants. He has not applied for a permit with DES for emissions testing. He is concerned with odor issues. He wants to know if there is any issues with the ledge that he is proposing to set this plant on. Is it fractured in any way? He referred to the master plan regarding the Mt. William property.

Joe Czarnacki, 37 Newman Wilson Road stated that he is the insurance agent for CJ Bolton and there is a lot of information regarding these asphalts that the public may not know. They do complete inspections yearly on these. Mr. Czarnacki stated that for 4-5 years before he was an insurance he actually worked testing asphalt plants that have been permitted by the State of NH. There are a lot more asphalt plants in NH that is situated in places that have more heavily residential development. There is some misunderstanding with the proposed plant. The particulate bag house is like a vacuum bag and it collects dust. Each year they get concerns from daycares, schools, etc. and he encouraged people to actually go out and look and gather more information.

Eric Rinehimer responded that the asphalt is tested with organic chemicals. He spent the past 16 years in the insurance business investigating environmental chemicals, so he knows how they are tested.

John Nelson, 55 Huntington Hill Road stated that he has known Mr. Bolton for a long time and he has some real considerable concerns. This board has approved a 20 lot subdivision that he proposed right next door. Mr. Nelson stated that he would like to know who is going to monitor the odors. He feels that his subdivision would be worthless if the Town lets this go in. His home is down wind and the particulate is dust but nobody likes to breathe dust. He sees that. The property values are going down with this. He has a whole lot of concern. He feels that there is no real benefit for the Town.

Trisha Ober, 47 Pondview Road stated that she wanted to address particulates that were addressed in the report from the Blue Ridge Environmental article. They did some investigating and they are looking at health concerns, not just the cancer causing pollutants.

Neal Kurk asked if Ms. Ober could give the board the citations that she was citing. She responded yes.

Raymond Harrison, 36 Roosevelt Road stated that in 1993 the State designated the Piscataquog River to be a protected river and because the river can't speak he would like to read the information from 1993 that discussed its importance.

Roger LeBlanc, 33 Roosevelt Road asked Mr. Bolton how many of the 22 wheeled dump trucks that belong to Thibeault are coming from your existing site. Mr. Bolton stated that none of the Thibeault trucks are coming from his gravel operation. Mr. Thibeault owns his own operation on Clough Park Road and that is where they all come from. Mr. LeBlanc asked what the capacity of tons of asphalt is is going to be in the vehicle, largest capacity. What will the temperature when it leaves the plant? What is going to happen when one of those trucks loose control going down River Road and there are school buses stopping to pick up kids? How can you possibly approve something like this that is

upsetting the Town and only be getting a measly \$16,000 in tax money? Bottom line is it is just not worth it.

Attorney Callen stated that to answer the earlier question about the capacity of the proposed plant, it was stated that it would be 4-6 tons per batch. He would like to ask, how long does it take to make a batch? His other point and he needs to emphasize his initial point is that this whole process of getting comments from the public is not allowed if this is legally not permissible. It is a commercial district with a portion of the parcel is in the RA district. The fact is that the gravel operation going on now is because it is a pre-existing non-conforming use. Its use is allowed as long as it is a gravel pit, that doesn't mean that he doesn't have any other legal use. That is grandfathered. He is looking to change from a grandfathered gravel operation to an asphalt batch plant. He urged the Town to continue this hearing to obtain Town Counsel opinion.

Chairman Francisco read the email that was received from Douglas Ewing, 125 Roosevelt Road. The email is in the file.

Frank Campana, Quaker Street stated that he can stand here and say that is it not in his back yard. He has no axe to grind with Mr. Bolton. There are three faces that are familiar to him. His concern is that the board has an obligation to the people who will be most affected. The decision has to be primary to that. He is a firm believer that a person has a right to do with his property but when it affects other people a fine line must be drawn. He feels that a decision made, to him needs to be looked at not just base it on the tax dollars this will generate. Or possibly the reduced or free asphalt Mr. Bolton might give us. He has heard a lot of things from residents of River Road and any increase of trucks will still be aggravating an existing problem. He would like the board to really consider the residents and he as a Town person has invested a lot of money in the preservation of land. Are you going to be setting a precedent with this? Make a decision not just based on today but for tomorrow as well.

Tom Clow stated that he would like to respond to Mr. Campana. First of all the decisions made by this board are not based on how much money we as the Town would be getting. We would be approving it on the basis of the ordinances when all the things are sorted out. There was an implication that there might be a deal made on asphalt. The Town puts it asphalt out to bid each year. There is nothing going on in the background about this. When is all said in done the board is going to be able to make notation about the discussion.

Christine Hague, Abijah Bridge Road discussed the regional transportation plan for Route 114 from Goffstown all the way to where it hits Manchester and adding additional trucks would be impacting an already impacted area. It is stated that it will be impacted to capacity by 2025. It will exasperate an already bad situation.

Dick Fraser, from One Source in Keene stated that he applauds folks bringing up issues of the environmentally permitting. He focuses on land use permitting and environmental permitting. One is federal that deals with clean water and clean air. On the State level he has dealt with all the air permitting, shore land protection, above ground storage tanks, etc. The Blue Ridge Environmental issue that was brought up had to do with an asphalt plant that was operating in 1973. Twenty years ago there were regulations and in the recent past the federal and state governments have ramped up the regulations. Above ground storage tanks need to be permitted especially for something like this because the proposed 8,000 gallon diesel fuel tank will need to be placed on the property for the purpose of feeding the burner. That comes heavily regulated. The fuel tank has to be approved by a PE. Bottom line they are highly regulated. Mr. Fraser brought up the fact that Attorney Callen stated that there was no final grading shown on the plans. He understands that there could possibly be another alteration terrain permit needed. A storm water permit from the State may also be needed. The point is that there is a lot of permitting that needs to be done prior to the plant being purchased. Then there is also more permits to be obtained once the plant is in place, as the gentleman from NHDES stated earlier.

Tony Rolon stated that he can appreciate the details and the facts but bottom line is that he is looking at his concern which is property values. His concern is the affect that will have on property values.

Mike Dahlberg stated that it is this board's job to interpret the zoning. Article 24.5 discusses service and retail establishments as permitted uses and an asphalt plant is a retail establishment. If you are to look at the zoning ordinance the only non-permitted use in the commercial zone is residential homes. This use is not listed. Then if you look at the definitions in article 4, particularly the accessory use, which states "shall mean a building or structure that is incidental and subordinate to the permitted use on a lot and used for purposes customarily associated with the primary use of the lot".

This lot has a grandfathered gravel operation which was grandfathered twice by two different select boards in Town. Mr. Bolton is proposing to sell 55,000 tons of asphalt that is only 13% of the current output. It is an inferior percentage of his use. He believes that it is an intense use and an emotional issue for lots of people, but it is still a retail sale of a property. Mr. Dahlberg stated that he can't engineer for a possible accident of a school bus. That is brought up during all subdivisions. He understands but feels it is not a valid one it is emotional and any decision can't be based on emotions.

Roger LeBlanc, 33 Roosevelt Drive stated that all he would like to ask is that if they could be kept in a loop. He suggests something of this magnitude needs to be put on the spring ballot, even if it is non-binding.

Diane Fleming, 85 Roosevelt Road asked whether the Town is prepared for any type of catastrophic accidents if one were to occur. There are explosives being stored on site. She knows that her foundation is cracked and can't help but believe that it is because of the blasting that occurs periodically at Mr. William. Ms. Fleming states that her whole house shakes. She is concerned with any fracturing of the land that this plant is going to sit on. She doesn't feel the Town is set up for a catastrophic issue. The trucks are moving up and down the street, waiting in line to get into the property. They are on the road loaded by 7:30 AM when there are kids getting ready for the bus and on the bus.

Raymond Harrison, 36 Roosevelt Road stated that his interpretation is that retail stuff means not manufacturing. This type of proposal will required having a lot of safety requirements and that is a concern. He feels that this does have a regional impact because of the aquifer.

Chairman Francisco asked if Mr. Bolton had any further comments. Mr. Bolton stated that he will just say what he said at the beginning of the meeting and that is that if he thought the neighbors were going to hear or smell it he wouldn't have done this. Simply stated, they are not going to smell it and they are not gong to hear it.

Eric Rinehimer wanted one last comment and that is that there is technology in place it is the responsibility to enforce the zoning ordinance. How does the board make a decision when the board is sworn to now allow it without impacting all.

Todd Moore stated that if anyone has any concerns or questions for him he has a few business cards he will leave with the board or you can go to the State of NH website and his phone number and email address are listed there as well.

Tom Clow stated that he would like to clarify this and put it to rest once and for all and that is whether it is permitted and what is allowed. In order to do that the board will need our own legal opinion on this.

Heleen Kurk stated that she felt the minutes of this meeting should appear on the website in 5 days so everyone can share that.

Neal Kurk stated that he has a number of concerns that deal with process. He wants to have a fair process. He is not sure whether we should get the legal opinion on acceptance and assuming we do have jurisdiction we need to make sure the application does meet all of the requirements. We need to make sure we give the residents a couple of weeks in advance of the next hearing. He thinks that we should reconsider our action on the regional impact and determine the possibility of a regional impact by giving additional notice to surrounding Towns is appropriate. We protect ourselves against the legal process. He believes there could be some doubt. He thinks it would also be helpful if Mr. Bolton would fly a balloon at the height of the stack. That could give people comfort or discomfort

of the site. That is relatively a low cost project. If we go ahead we need a variety of studies to make a determination. Traffic, real estate values, odor and noise should be additional studies looked at.

Dani-Jean Stuart stated that she agrees with most of what Mr. Kurk and that the board needs to find out if we can get legal opinion because this may all be mute.

Chairman Francisco stated that we need to look at the issues and tell the applicant specifically what we want.

Mr. Kurk thinks that we should reconsider the regional impact issue. Neal Kurk moved to reconsider the previous action taken regarding regional impact; Dani-Jean Stuart seconded the motion. Vote: majority in favor.

Neal Kurk made a motion that this proposal is likely to have regional impact on Dunbarton, New Boston and Goffstown. Before there was a second, Tom Clow stated that he is concerned with the wording "is likely to have". He would like to see it changed to "could possibly have". Mr. Kurk agreed with the amendment to the motion so that it would now read: that this proposal could possibly have regional impact on Dunbarton, New Boston and Goffstown; Dani-Jean Stuart seconded the motion. Discussion: Chairman Francisco stated that he thought we should add all the towns that are covered by Southern NH Planning Commission and Central NH Planning Commission because Dunbarton and Henniker are part of Central NH Planning. Vote: all in favor.

The board then discussed the date for the next meeting. Naomi pointed out that the board's next regular meeting is October 22, 2009, but if the board is looking for a legal opinion that might be too tight of a time frame for everyone. Regardless of the date, it should be posted on the Town website and Town cable channel 6.

Chris Bolton suggested that we should continue this meeting to a date into November, which would allow Town counsel time for a response and he agreed to pay for the immediate abutter notification as he is legally responsible for. It would also be put in the newspaper for one day and posted in two public places.

Neal Kurk moved to continue this hearing to a date, time, place to be determined by the chair and that notices be sent out according to State statute and information about it be posted on the planning board's portion of the Town Website; Tom Clow seconded the hearing, all in favor.

IV. ADJOURNMENT:

As there was no further business to come before the board, Tom Clow moved to adjourn at 9:55 PM; George Malette seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator